

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PROTEGO NETWORKS, INC.

No. C 05-0464 MJJ (MEJ)

Plaintiff(s),

**ORDER RE: INTERROGATORIES**

vs.

DANIEL N. ZENCHELSKY,

Defendant and Counterclaimant.

DANIEL N. ZENCHELSKY,

Counterclaimant,

vs.

PROTEGO NETWORKS, LLC., et al.,

Counterdefendants(s).

The Court is in receipt of the parties' joint discovery dispute letter, filed June 20, 2006. Doc. #92. In the letter, plaintiff and counterdefendant Protego Networks, LLC ("Protego") asks the Court to compel defendant and counterclaimant Daniel Zenchelsky to provide further interrogatory responses. According to the letter, for approximately two months in 2002, Zenchelsky was a member of a working group of engineers that evolved into Protego. In December 2004, Cisco announced its intention to purchase Protego for \$65 million. Claiming an ownership interest in

1 Protego and its intellectual property, Zenchelsky's current claims include misappropriation of  
2 scientific ideas, conversion, copyright infringement, and correction of inventorship.

3 On March 30, 2006, Protego propounded interrogatories asking Zenchelsky to specify what  
4 he claims to have invented and what he did during his time with the working group. In his  
5 responses, Zenchelsky provides written answers and also states that "[t]he facts and ideas responsive  
6 to this request are described more fully in documents produced by Zenchelsky . . . ." Protego argues  
7 that this statement fails to meet the requirements of FRCP 33(d). In response, Zenchelsky argues  
8 that FRCP 33(d) does not apply to his responses because the rule contemplates a responding party's  
9 identification of documents *in lieu* of serving a substantive response.

10 Under FRCP 33(d), a party may respond to interrogatories by specifying documents and/or  
11 records from which the answer may be derived. However, "[a] specification shall be in sufficient  
12 detail to permit the interrogatory party to locate and to identify, as readily as can the party served,  
13 the records from which the answer may be ascertained." Fed. R. Civ. P. 33(d). Here, Zenchelsky  
14 references documents without any specificity. It is unclear how a broad reference to documents is  
15 intended to provide a useful response to Protego's interrogatories, even if, as Zenchelsky states, the  
16 reference is only intended to supplement his written responses. Moreover, Zenchelsky provides no  
17 authority for his argument that a broad reference to documents intended to supplement a written  
18 response need not comply with FRCP 33(d). Thus, to the extent that Zenchelsky believes that the  
19 documents "more fully" respond to the interrogatories, he must comply with FRCP 33(d) and specify  
20 the documents by bates number.

21 Protego also argues that Zenchelsky's responsive are vague and ultimately nonresponsive.  
22 As there are five disputed interrogatories, the Court shall consider each in turn.

23 Interrogatory No. 1

24 Interrogatory No. 1 states as follows: "IDENTIFY with particularity each and every  
25 'scientific idea', whether reduced to tangible form or not, that you allege was misappropriated by any  
26 or all of the COUNTERCLAIM DEFENDANTS, as alleged in the Eighth Cause of Action of your  
27 COUNTERCLAIM." Joint Letter, Ex. 1. In his response, Zenchelsky objected that the  
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1 interrogatory failed to define the term "scientific idea." Zenchelsky responded as to an "idea" for an  
2 invention "that allows one to more accurately identify network events, to correlate them to allow for  
3 assessment of network risk and to help determine whether any particular event is friend or foe." *Id.*  
4 Protego argues that it is entitled to receive a complete and specific response that identifies the  
5 "scientific ideas" that Zenchelsky claims were his ideas and were misappropriated.

6       Given that the term "scientific idea" is used by Zenchelsky in his eighth counterclaim, *see*  
7 Answer and Second Amended Counterclaim, Doc. #50, the Court finds his objection to the term  
8 questionable. Accordingly, Zenchelsky shall respond to Interrogatory No. 1 as the term is used in  
9 his counterclaims, in addition to the FRCP 33(d) directive above.

10 Interrogatory No. 2

11       Interrogatory No. 2 states as follows: "IDENTIFY with particularity the content of each and  
12 every idea, whether reduced to tangible form or not, that YOU allege to have contributed to the IP  
13 that YOU allege was taken, stolen, and/or misappropriated by any or all of the COUNTERCLAIM  
14 DEFENDANTS." Joint Letter, Ex. 1. Protego argues that Zenchelsky's response to Interrogatory  
15 No. 2 is deficient because it does not specify the content of the ideas that are his or that he  
16 contributed. Zenchelsky responds that the conception of the invention was joint and collaborative,  
17 rather than attributable to one person or another.

18       In his interrogatory response, Zenchelsky provides a summary of the NAT zones model and  
19 algorithms, and states that he invented the idea with Shigang Chen. Although Protego argues that  
20 the interrogatory seeks only his ideas, it is clear from Zenchelsky's response that any ideas he claims  
21 are the result of joint and collaborative efforts, not his alone. Thus, the Court finds his response  
22 adequate, with the exception of the FRCP 33(d) requirements discussed above. Accordingly,  
23 Zenchelsky need only amend his response to provide specific bates numbers for any referenced  
24 documents.

25 Interrogatory No. 3

26       Interrogatory No. 3 states as follows: "IDENTIFY with particularity the content of each and  
27 every idea, whether reduced to tangible form or not, that YOU allege to have contributed to the '920  
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1 PATENT." Joint Letter, Ex. 1. Protego argues that Zenchelsky's response fails to identify any  
2 particular idea in the '920 Patent. The Court disagrees. Zenchelsky's response references his  
3 responses to Interrogatory Nos. 1-2, stating that they "form the basis of the subject matter of the '920  
4 PATENT." *Id.* at Ex. 3. Thus, it is Zenchelsky's position that his ideas and the '920 patent are one  
5 in the same. Given his position, the Court finds that his responses to Interrogatory Nos. 1-2 also  
6 respond to Interrogatory No. 3. However, if necessary based on any other directive in this Order,  
7 Zenchelsky shall amend his response to comply with the requirements discussed herein, such as  
8 FRCP 33(d).

9 Interrogatory No. 4

10 Interrogatory No. 4 states as follows: "DESCRIBE in detail all facts supporting YOUR  
11 contention that YOU conceived, designed, invented, developed, and/or created the IP that YOU  
12 allege was taken, stolen and/or misappropriated by any or all of the COUNTERCLAIM  
13 DEFENDANTS." Joint Letter, Ex. 1. Protego argues that Zenchelsky's response fails to provide a  
14 detailed description as requested and, furthermore, the response refers obliquely to correspondence,  
15 emails, conversations, and algorithms. Protego contends that Zenchelsky must identify these items  
16 with sufficient particularity.

17 Although his response is in summary form, Zenchelsky references correspondence, emails,  
18 conversations, and algorithms that provide more detailed information. The Court finds that his  
19 response is sufficient, so long as the references comply with the requirements of FRCP 33(d).  
20 Accordingly, Zenchelsky shall amend his response to provide specific bates numbers for any  
21 referenced materials.

22 Interrogatory No. 5

23 Interrogatory No. 5 states as follows: "DESCRIBE in detail all facts supporting YOUR  
24 contention that YOU conceived, designed, invented, developed, authored, and/or created the  
25 inventions and/or ideas in the '920 PATENT." Joint Letter, Ex. 1. Zenchelsky's response states as  
26 follows: "See Response to Interrogatory Nos. 1-4." Joint Letter, Ex. 3. Protego argues that a  
27 sufficient response would at least identify the subset of facts from the four responses that  
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1 Zenchelsky alleges support his claim. As in his response to Interrogatory No. 3, it is Zenchelsky's  
2 position that his ideas and the '920 patent are one in the same. Given his position, the Court finds  
3 that his responses to Interrogatory Nos. 1-4 also respond to Interrogatory No. 5. However, if  
4 necessary based on any other directive in this Order, Zenchelsky shall amend his response to comply  
5 with the requirements discussed herein, such as FRCP 33(d).

6 **IT IS SO ORDERED.**

7  
8 Dated: July 5, 2006

  
9 MARIA-ELENA JAMES  
United States Magistrate Judge